Supreme Court, U.S.
FILED
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CLERK

(2)

No. 98-1503

In The

Supreme Court of the United States

FIRST FEDERAL BANK OF CALIFORNIA,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent,

CONNIE SCHULTZ,

Real Party In Interest.

On Petition For Writ Of Certiorari To The Supreme Court Of California

RESPONDENT'S BRIEF IN OPPOSITION

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INTRODUCTION

After a successful twenty-two year career in which she rose from an entry level position to branch manager and vice president, Connie Schultz found her career at First Federal Savings torpedoed when one of her assistant managers, Terri Baker, defamed her by spreading false charges that Ms. Schultz had helped a customer break the law by hiding large cash deposits from the scrutiny of government regulators. Contrary to the impression left by the Petition for writ of certiorari (hereafter Petition), page 3, Ms. Schultz's primary claim is for defamation, *not* for an implied-in-fact contract. One consolidated set of facts underlies both claims, and the case is scheduled to go to trial on September 28, 1999.

Thus, regardless of what this Court does with this Petition, the case will go to trial on the defamation claim anyway.

ARGUMENT

1. THE UNITED STATES SUPREME COURT SHOULD DENY THE PETITION SUMMARILY.

A. There is No "Decision" of any Lower Court to Overturn.

No court has given a citable decision on the merits on the issues raised by petitioner. The Superior Court simply denied the defense motion for summary adjudication; it did not render an opinion. The trial court recognized, obviously, that the case would go to trial on the identical

set of facts on Ms. Schultz's defamation claim in any event.

Nor did the California Court of Appeal or the California Supreme Court render any decision on the merits. The Court of Appeal simply denied First Federal's petition for a writ of mandate summarily, without comment, in a nonpublished, one-sentence, uncitable order. This is a very common practice of California Courts of Appeal faced with petitions for writs where the case is going to go to trial on other issues, regardless of whether the court grants the petition.

Likewise, the California Supreme Court denied First Federal's petition for review summarily, again without a decision, in an uncitable, unpublished order. The California Supreme Court denies review in civil cases in this fashion approximately 95% of the time, especially where the Court of Appeal has also denied a writ petition summarily.

Thus, First Federal's lamenting of its having to go to a jury trial in this case (Petition, p. 3) *does not* tell the Court that no matter whether there is a contract claim or not, First Federal is still going to have to explain its conduct to twelve men and women.

B. First Federal Does Not State Any Compelling Reasons to Justify the United States Supreme Court's Exercising Its Discretion in Granting the Petition for Writ of Certiorari.

The criteria by which the United States Supreme Court will consider granting a petition for writ of

certiorari is set forth in Supreme Court Rules, Rule 10. This rule provides:

"Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or a United States court of appeal;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court."

A petition for a writ of certiorari is rarely granted when the asserted error does not fit into any of the above categories. This is exactly the situation we have here. Has a United States Court of Appeals entered a decision which conflicts with the decision of another United States Court of Appeals on the same matter? Obviously not. Has a state court of last resort decided an important federal

question in a way that conflicts with the decision of another state court of last resort? Not at all. Has a state court decided an important question of federal law that has not been but should be settled by this Court? Not even close. Indeed, has a state court even made a reviewable decision? No way!

Thus, First Federal presents absolutely no compelling reason for the United States Supreme Court to exercise its discretion. It satisfies none of the criteria of Rule 10, nor can it do so.

CONCLUSION

The United States Supreme Court has far more important issues to decide than the supposed issue raised by petitioner. There is no decision to review and the case is going to go to trial on the defamation claim in any event. This Court should deny the petition summarily.

Respectfully submitted,

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